

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FREDERICK KARONY, an individual,

Plaintiff,

vs.

DOLLAR LOAN CENTER, LLC, a Nevada
limited liability company; CLARK COUNTY
COLLECTION SERVICE, LLC, a Nevada
limited liability company, DOES I-V, inclusive;
and ROE ENTITIES VI-X, inclusive,

Defendants.

Case No.: 2:10-cv-00804-RLH-RJJ

ORDER

(Motion to Dismiss—#12)

Before the Court is Defendants Dollar Loan Center, LLC (“Dollar Loan”) and Clark County Collection Service, LLC’s (“Clark County Collections”) (collectively “Defendants”) **Motion to Dismiss, Or, Alternatively, For Summary Judgment** (#12), filed July 2, 2010. The Court has also considered Plaintiff Frederick Karony’s (“Karony”) Opposition (#13), filed July 15, 2010, and Defendants’ Reply (#14), filed July 26, 2010.

BACKGROUND

This dispute arises out of Karony’s claim that Defendants engaged in various debt collection and credit reporting activities in violation of both federal and state law. Karony alleges the following facts in support of his claims. In April 2007, Karony’s wife, Michelle Karony (a

1 non-party), entered into a promissory note (the “Debt”) with Dollar Loan. This is the debt at issue
 2 in this case. In July 2008, after Karony’s wife defaulted on the Debt, Dollar Loan hired Clark
 3 County Collections for collections services, which included reporting the Debt against Karony’s
 4 credit score to the three credit bureaus—TransUnion, Experian, and Equifax. Later that year
 5 Karony disputed the debt with all three credit bureaus. By April 2009, both TransUnion and
 6 Experian removed the Debt from Karony’s credit report. In addition to their reporting activities, in
 7 July 2008, Clark County Collections also filed a lawsuit in the Justice Court of the Las Vegas
 8 Township (the “Underlying Lawsuit”), naming both Karony and his wife as defendants. Karony
 9 challenged this lawsuit on the basis that he was not personally responsible for the Debt because he
 10 had not signed the promissory note. In August 2009, the Justice Court dismissed Karony from that
 11 lawsuit. Despite Karony’s repeated requests and his dismissal from the Underlying Lawsuit, Clark
 12 County Collections continues to verify the Debt to Equifax, resulting in a drop in Karony’s credit
 13 score.

14 On May 27, 2010, Karony commenced this action asserting seven causes of action,
 15 including: (1) violations of the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.
 16 § 1692, *et seq.*; (2) violations of the Federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §
 17 1681, *et seq.*; (3) defamation; (4) professional negligence; (5) intentional infliction of emotional
 18 distress; (6) abuse of process; and (7) negligence per se. On July 2, Defendants filed this motion
 19 requesting the Court to dismiss most of Karony’s claims. For the reasons discussed below, the
 20 Court grants the motion in part and denies it in part.

21 DISCUSSION

22 I. Legal Standard

23 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which
 24 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short
 25 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
 26 8(a)(2). While Rule 8 does not require detailed factual allegations, it demands “more than labels

1 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*,
 2 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Factual
 3 allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus,
 4 to survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim
 5 to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

6 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
 7 apply when considering motions to dismiss. First, a district court must accept as true all well-pled
 8 factual allegations in the complaint; however, legal conclusions are not entitled to the assumption
 9 of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by
 10 conclusory statements, also do not suffice. *Id.* at 1949. Second, a district court must consider
 11 whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A
 12 claim is facially plausible when the plaintiff’s complaint alleges facts that allow the court to draw
 13 a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where
 14 the complaint does not permit the court to infer more than the mere possibility of misconduct, the
 15 complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal
 16 quotation marks omitted). When the claims in a complaint have not crossed the line from
 17 conceivable to plausible, plaintiff’s complaint must be dismissed. *Twombly*, 550 U.S. at 570.

18 **II. Defendants’ Motion to Dismiss**

19 **A. FDCPA and FCRA Claims Against Dollar Loan Center**

20 The Court dismisses the FDCPA and FCRA claims against Defendant Dollar Loan
 21 because Karony fails to allege facts that would allow this Court to reasonably infer that Dollar
 22 Loan is liable for misconduct under those statutes. Dollar Loan is not liable for the alleged
 23 FDCPA violations because it is not a “debt collector” within the meaning of 15 U.S.C. § 1692a(6),
 24 and the FDCPA only prohibits conduct by “debt collectors.” *See* 15 U.S.C. §§ 1692d, 1692e,
 25 1692f, 1692g, and 1692i. Similarly, Dollar Loan is not liable for the alleged FCRA violations
 26 because it is not a “furnisher of information” within the meaning of 15 U.S.C. § 1681s-2, which

1 establishes duties for “furnishers of information.” Accordingly, the Court dismisses the FDCPA
2 and FCRA claims against Dollar Loan.

3 **B. FDCPA and FCRA Statutes of Limitations**

4 Actions to enforce liability under the FDCPA must be brought “within one year
5 from the date on which the violation occurs.” 15 U.S.C. § 1692k(d). Likewise, an action to
6 enforce liability under the FCRA must be within two years “after the date of discovery by the
7 plaintiff of the violation that is the basis for such liability.” 15 U.S.C. § 1681p. In this case,
8 Karony filed his complaint on May 27, 2010. Because the alleged FDCPA and FCRA violations
9 have occurred since approximately July 2008, only those violations occurring after May 2009 and
10 May 2008, respectively, are actionable. Accordingly, the Court dismisses all alleged FDCPA and
11 FCRA violations occurring before May 2009 and May 2008, respectively.

12 **C. Validity of FDCPA Claims**

13 Defendants argue that Karony fails to state a valid claim under the FDCPA.
14 Because Karony asserts violations of several FDCPA provisions, the Court will address each
15 provision separately to determine the validity of each claim.

16 **1. Section 1692d**

17 “A debt collector may not engage in any conduct the natural consequence of which
18 is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. §
19 1692d. Karony alleges that Defendants engaged in a “campaign of abusive, unfair, unreasonable,
20 and unlawful debt collection activity” by continuously pursuing him for a debt that he claims he is
21 not responsible for. Defendants argue that the debt at issue is a community debt and, therefore,
22 they have a right to pursue both Karony and his wife for collection of that debt. However, this
23 argument assumes that the debt in question is in fact a community liability. But that is a factual
24 issue that the trier of fact has not resolved. This is important because if the debt is a separate
25 liability Defendants have failed to furnish any controlling law showing that, under those
26 circumstances, they have a right to pursue Karony in satisfaction of the Debt. Therefore, accepting

1 Karony's allegations as true, the Court finds that Karony has stated a valid claim for relief under §
2 1692d.

3 **2. Section 1692e**

4 "A debt collector may not use any false, deceptive, or misleading representation or
5 means in connection with the collection of any debt." 15 U.S.C. § 1692e. Karony alleges that
6 Defendants reported false information to the credit bureaus and failed to inform the credit bureaus
7 that the debt was disputed. Accepting these allegations as true, the Court finds that Karony has
8 stated a valid claim for relief under § 1692e.

9 **3. Section 1692f**

10 "A debt collector may not use unfair or unconscionable means to collect or attempt
11 to collect any debt." 15 U.S.C. § 1692f. Karony alleges that Defendants used unfair and
12 unreasonable means of collecting the Debt by attempting to collect it from him through persistent
13 and indiscriminate litigation and credit reporting tactics. Again, Defendants argue that the Debt is
14 a community debt and, therefore, they have a right to pursue both Karony and his wife for
15 collection of that debt. However, as discussed above, the Court is not convinced by this argument.
16 Therefore, accepting Karony's allegations as true, the Court finds that he has stated a valid claim
17 for relief under § 1692f.

18 **4. Section 1692g**

19 Section 1692g establishes a debtor's right to dispute a debt and obtain verification
20 thereof. Specifically, subsection (a) requires a debt collector to notify the debtor of the amount of
21 the alleged debt, the name of the creditor, and the debtor's right to dispute the debt, in writing,
22 within thirty days of the notification. 15 U.S.C. § 1692g(a). If a debtor disputes the alleged debt,
23 subsection (b) requires the debt collector to cease collection activities until the debt is verified and
24 that verification is sent to the debtor. 15 U.S.C. § 1692g(b). Karony alleges no facts indicating
25 that Defendants failed to timely send him proper notification of the debt pursuant to subsection (a).

26 /

1 Karony also fails to allege that he disputed the debt in writing within thirty days of said
 2 notification, thereby triggering Defendants' responsibility to verify the debt pursuant to subsection
 3 (b). Therefore, Karony fails to allege any facts that would allow the Court to reasonably infer that
 4 Defendants are liable for misconduct under § 1692g. Accordingly, the Court dismisses this claim.

5 **5. Section 1692i**

6 "Any debt collector who brings any legal action on a debt against any consumer
 7 shall . . . bring such action only in the judicial district . . . in which such consumer resides at the
 8 commencement of the action." 15 U.S.C. § 1692i(a)(2)(B). Defendants commenced the
 9 Underlying Lawsuit in the Justice Court of the Las Vegas Township and Karony resides in Las
 10 Vegas. Thus, Defendants complied with § 1692i by suing Karony in Las Vegas—regardless of
 11 whether that suit was improper under other FDCPA provisions. Therefore, Karony fails to allege
 12 how Defendants violated this statute. Accordingly, the Court dismisses this claim.

13 **D. Validity of FCRA Claim—15 U.S.C. § 1681s-2**

14 Section 1681s-2 imposes several duties on "furnishers of information." A
 15 "furnisher of information" is a person who provides information to credit reporting agencies. 15
 16 U.S.C. § 1681s-2. Because the complaint is not specific as to which duties the Defendants
 17 allegedly violated, the Court will analyze only those duties which it can logically imply based on
 18 Karony's factual allegations.

19 **1. Duty to Provide Accurate Information**

20 Under § 1681s-2(a)(1)(A), a furnisher must not provide any information to a credit
 21 reporting agency if the furnisher "knows or has reasonable cause to believe that the information is
 22 inaccurate." A furnisher has "reasonable cause to believe that the information is inaccurate" if the
 23 furnisher has "specific knowledge, other than solely allegations by the consumer, that would cause
 24 a reasonable person to have substantial doubts about the accuracy of the information." *Id.* at
 25 § 1681s-2(a)(1)(D). Karony alleges that Defendants reported the Debt to the credit reporting
 26 agencies despite knowing that Karony was dismissed from the Underlying Lawsuit and that

1 Karony did not personally sign the promissory note or agree to be responsible for the Debt in
 2 anyway. Accepting these allegations as true, it is reasonable to believe that reasonable doubts
 3 could arise as to the accuracy of reporting the Debt against Karony. Accordingly, the Court finds
 4 that Karony has alleged sufficient facts to state a claim under § 1681s-2(a)(1)(A).

5 **2. Duty to Provide Notice of Dispute**

6 Under § 1681s-2(a)(3), a furnisher must inform a credit reporting agency that a
 7 consumer is disputing a reported debt. Karony alleges that despite having knowledge that he
 8 disputed the Debt, Defendants continued to verify the Debt to the credit reporting agencies.
 9 Accepting these allegations as true, the Court may reasonably infer that Defendants are liable for
 10 violating this duty. Accordingly, the Court finds that Karony has stated a valid claim under §
 11 1681s-2(a)(3).

12 **E. FCRA Preemption of Karony's Defamation Claim**

13 The FCRA provides, "[n]o requirement or prohibition may be imposed under the
 14 laws of any State . . . with respect to any subject matter regulated under 15 U.S.C. § 1681s-2,
 15 relating to the responsibilities of persons who furnish information to consumer reporting agencies
 16" 15 U.S.C. § 1681t(b)(1)(F). As discussed above, § 1681s-2 imposes several responsibilities
 17 upon a furnisher of information. These include reporting accurate information to credit agencies
 18 and informing credit agencies when a consumer disputes a debt. In this case, Karony asserts
 19 several common law claims against Defendants. To the extent the common law claims relate to
 20 Defendants' responsibilities under § 1681s-2, they are preempted. Because Karony's defamation
 21 claim is based upon Defendants' responsibilities under § 1681s-2 the Court finds that it is
 22 preempted and, therefore, must be dismissed.

23 **F. Validity of Karony's Remaining Common Law Claims**

24 Defendants challenge all but one of Karony's remaining common law claims,
 25 arguing that they are substantively without merit. The Court will address each of the challenged
 26 claims individually.

1 **1. Professional Negligence**

2 Under Nevada law, to establish a claim for professional negligence the plaintiff
3 must show that the defendant owed a duty of care to the plaintiff, among other things. *Morgano v.*
4 *Smith*, 879 P.2d 735, 738 n. 2 (Nev. 1994). “It is the contractual relationship between the
5 professional and its client that creates a duty of care upon the professional.” *In re AgriBioTech,*
6 *Inc.*, 319 B.R. 216, 222 (D. Nev. 2004) (citing *Warmbrodt v. Blanchard*, 692 P.2d 1282, 1285
7 (Nev. 1984)). The basis for Karony’s professional negligence claim is that Defendants engaged in
8 malicious debt collection conduct. However, Karony does not allege that he had a professional,
9 contractual relationship with Defendants. As such, Defendants do not owe Karony a duty of care.
10 Accordingly, the Court dismisses this claim.

11 **2. Abuse of Process**

12 Under Nevada law, to establish a claim for abuse of process the plaintiff must
13 show: (1) defendant had an ulterior purpose other than resolving a legal dispute; and (2)
14 defendant’s willful act in using the process was not proper in the regular conduct of the
15 proceeding. *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002). With respect to the second
16 element, the mere filing of a complaint with malicious intent is insufficient to state an abuse of
17 process claim. *Laxalt v. McClatchy*, 622 F. Supp. 737, 752 (D. Nev. 1985). Instead, claimants
18 must include some allegation of abusive measures taken *after* the filing of the complaint in order
19 to state a claim. *Id.* Although Karony alleges an ulterior purpose to the Underlying Lawsuit, he
20 alleges no facts occurring subsequent to the filing of the Underlying Lawsuit in support of the
21 second element to this claim. Accordingly, Karony alleges insufficient facts to support a claim for
22 abuse of process. Therefore, the Court dismisses this claim.

23 **3. Negligence Per Se**

24 The elements of negligence per se in Nevada are: (1) the existence of a duty of care
25 on the part of the defendant; (2) breach of that duty; (3) causation; and (4) damages. *Sanchez ex*
26 *rel. Sanchez v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1282 (Nev. 2009). “A civil statute’s

1 violation establishes the duty and breach elements of negligence when the injured party is in the
 2 class of person whom the statute is intended to protect and the injury is of the type against which
 3 the statute is intended to protect.” *Id.* at 1283. Karony alleges that Defendants violated the
 4 “Nevada Revised Statutes” by pursuing him for a debt that he claims is not his. However, Karony
 5 fails to allege on the face of his complaint which NRS provision was violated. Accordingly, the
 6 Court finds that this claim fails as a matter of law and, therefore, dismisses the claim.

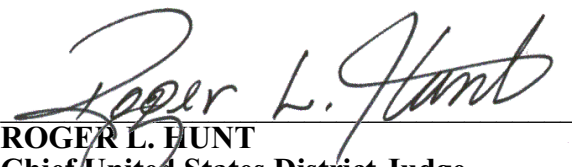
7 CONCLUSION

8 Accordingly, and for good cause appearing,

9 IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss (#12) is
 10 GRANTED in part and DENIED in part, as follows:

- 11 • GRANTED as to all FDCPA and FCRA claims asserted against Defendant
- 12 Dollar Loan Center, LLC.
- 13 • GRANTED as to all alleged FDCPA and FCRA violations occurring before
- 14 May 2009 and May 2008, respectively.
- 15 • GRANTED as to Karony’s common law claims for defamation,
- 16 professional negligence, abuse of process and negligence per se.
- 17 • DENIED as to Karony’s claims under 15 U.S.C. §§ 1681s-2(a)(1)(A),
- 18 1681s-2(a)(3), 1692d, 1692e, and 1692f.

19 Dated: December 13, 2010

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 22 **ROGER L. HUNT**
 23 Chief United States District Judge
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